



DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED-2020-OESE-0199]

Final priority and definition—Teacher and School Leader
Incentive (TSL) Program

AGENCY: Office of Elementary and Secondary Education,
Department of Education.

ACTION: Final priority and definition.

SUMMARY: The Department announces one priority and one
definition under the Teacher and School Leader Incentive
Program (TSL), Assistance Listing Number 84.374A. The
Department may use this priority and definition for
competitions in fiscal year (FY) 2021 and later years. We
take this action to make program improvements based on
lessons learned over the last decade and to improve program
outcomes.

DATES: The priority and definition are effective [INSERT
DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL
REGISTER].

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If you use a telecommunications device for the deaf
(TDD) or a text telephone (TTY), call the Federal Relay

Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The purpose of TSL is to assist States, local educational agencies (LEAs), and nonprofit organizations to develop, implement, improve, or expand comprehensive performance-based compensation systems (PBCS) or human capital management systems (HCMS) for teachers, principals, and other school leaders (educators) (especially educators in High-Need Schools who raise student academic achievement and close the achievement gap between high- and low-performing students). In addition, a portion of TSL funds may be used to study the effectiveness, fairness, quality, consistency, and reliability of such systems.

Program Authority: Sections 2211-2213 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), 20 U.S.C. 6631-6633.

A notice of proposed priorities (NPP) for this program was published in the *Federal Register* on April 9, 2021 (86 FR 18519). The NPP contained background information and our reasons for proposing the priority and definition.

Except for minor editorial and technical revisions, there are no differences between the proposed priority and definition and the final priority and definition.

Public Comment: In response to our invitation in the NPP, two comments were received, neither of which were relevant

to the proposed priority and definition. The Secretary appreciates the public's interest in this program and the comments received in response to the NPP. However, we do not address general comments that raise concerns not directly related to the NPP.

FINAL PRIORITY:

High-Need Schools.

Under this priority, eligible applicants must concentrate proposed activities on teachers, principals, or other school leaders serving in High-Need Schools.

In order to demonstrate that the TSL project is concentrated in High-Need Schools, the applicant must--

(a) Provide the requested data in paragraph (c) of this priority to demonstrate that at least the majority of the schools participating in the proposed project are High-Need Schools and describe how the TSL-assisted grant activities are focused on those schools;

(b) Include a list of all schools in which the proposed TSL-funded project would be implemented and indicate which schools are High-Need Schools; and

(c) Provide the most recently available school-level data supporting each school's designation as a High-Need School.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority

as absolute, competitive preference, or invitational through a notice in the *Federal Register*. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

FINAL DEFINITION:

The Assistant Secretary establishes the following definition for this program. We may apply this definition in any year in which this program is in effect.

High-Need School means a school with 50 percent or more of its enrollment from low-income families as calculated using--

(1) The number of children eligible for a free or reduced-price lunch under the National School Lunch Program (NSLP) (or, if an LEA does not participate in the NSLP, comparable data from another source such as a survey);

(2) If an LEA has one or more schools that participate in the Community Eligibility Provision (CEP) of the NSLP, for any of its schools (i.e., CEP and non-CEP schools), the method in paragraph (1) of this definition or an alternative method approved by the Department; and

(3) For middle and high schools, data from feeder schools that can establish that the middle or high school is a High-Need School under paragraph (1) or (2) of this definition.

This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does not solicit applications. In any year in which we choose to use this priority and definition, we invite applications through a notice in the *Federal Register*.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is "significant" and, therefore, subject to the

requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in

Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as

possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

We are issuing this final priority and definition only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

The Department believes that this regulatory action will not impose significant costs on eligible entities, whose participation in our programs is voluntary, and costs can generally be covered with grant funds. As a result, the priority and definition will not impose any particular burden except when an entity voluntarily elects to apply for a grant. The benefits of the priority and definition will outweigh any associated costs because they will help ensure that the Department’s TSL grant program selects

high-quality applicants to implement activities that are designed to address High-Need Schools.

Regulatory Flexibility Act Certification:

The Secretary certifies that this regulatory action does not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below \$7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

The small entities that this regulatory action would affect are school districts, nonprofit organizations, and for-profit organizations. Of the impacts we estimate accruing to grantees or eligible entities, all are voluntary and related mostly to an increase in the number of applications prepared and submitted annually for competitive grant competitions. Therefore, we do not believe that the priority and definition would significantly impact small entities beyond the potential for increasing the likelihood of their applying for, and receiving, competitive grants from the Department.

Paperwork Reduction Act of 1995: The priority and definition contain information collection requirements that are approved by OMB under OMB control number 1810-0758; the priority and definition do not affect the currently approved data collection. An FY 2021 competition would require applicants to complete and submit an application for Federal assistance using Department standard application forms. As a part of the application submission, respondents, who are LEAs, State educational agencies, the Bureau of Indian Education, nonprofit or for-profit organizations, or a combination thereof, will submit information demonstrating that each school included in the TSL-assisted project is a High-Need school. We estimate that for the FY 2021 TSL competition and later competitions, each applicant will spend approximately 87 hours of staff time to address the priority and definition. Based on the number of applications the Department received in the FY 2020 TSL competition, we expect to receive approximately 100 applications for these funds. The total number of hours for all expected applicants to address this priority and definition is an estimated 8,700 hours.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes

developed by State and local governments for coordination and review of proposed Federal financial assistance. This document provides early notification of our specific plans and actions for this program.

Accessible Format: On request to the program contact person listed under FOR FURTHER INFORMATION CONTACT, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the *Federal Register*. You may access the official edition of the *Federal Register* and the Code of Federal Regulations at: www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the *Federal Register*, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the *Federal Register* by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

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